IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3437 OF 2007

Mahadev Vitthal Talekar ...Petitioner

vs.

Shankar Maruti Talekar & Others ...Respondents

Mr.R.G.Ketkar for the Petitioner

CORAM: A.S.OKA,J.
DATE : JULY 4, 2007.

P.C.:

1. Heard learned Advocate for the Petitioner. The Petitioner is the original Defendant. The Respondents filed a suit simplicitor for injunction. In the said suit, an Application was taken out by the Respondents for temporary injunction. The said Application was allowed by the trial Court by recording a prima facie finding that the Respondents have established their possession. The order of temporary injunction has been confirmed in Appeal.

2. The learned Advocate for the Petitioner submitted that there was non compliance with the Rule 3 of Order VII of the Code of Civil Procedure,1908.

3. This aspect has been dealt with by the Trial Court. It was noted that the suit is not for removal of encroachment and the suit is for injunction. There are concurrent findings of fact recorded by the Courts below as regards possession. The

order of temporary injunction is always discretionary. No case is made out for interference with the concurrent orders passed by the Courts below in this Writ Petition under Article 227 of Constitution of India. Writ Petition is rejected.

4. It is made clear that the suit will be decided by the Trial Court on its own merits without being influenced by the tentative observations made by the Courts below and confirmation thereof by this court. The Trial Court will decide the suit expeditiously.

JUDGE